

**UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
REGION 8**

**RICHARD JACOBS GROUP, INC.  
d/b/a BELDEN VILLAGE MALL<sup>1</sup>**

**Employer**

**and**

**Case No. 8-RC-16081**

**UNITED FOOD AND COMMERCIAL  
WORKERS UNION, LOCAL 880,  
AFL-CIO, CLC**

**Petitioner**

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.

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<sup>1</sup> The Employer's name appears as stipulated at the hearing in Board Exhibit 2.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

*All full-time and regular part-time employees in the housekeeping, promotion, gift wrap, customer service and food court departments but excluding all maintenance employees, seasonal employees, office clerical employees and all professional employees, guards and supervisors as defined in the Act.*

Approximately 31 employees are in the unit found to be appropriate.

The Petitioner seeks to represent a unit consisting of housekeeping, promotion, gift wrap, customer service and food court employees employed by the Employer at the Belden Village Mall. but excluding employees working on a temporary basis during the Christmas and Easter periods (hereinafter "temporary/seasonal" employees)<sup>2</sup> and other employees working in the maintenance department. The Employer requests that the bargaining unit include both the temporary/seasonal employees as well as those working in the maintenance department.

## **I. THE FACTS**

The Employer, Richard E. Jacobs Group, Inc. d/b/a Belden Village Mall ("Jacobs Group" or the "Employer"), is an Ohio corporation engaged in the development, operation and management of common properties and operates a shopping mall in Canton, Ohio, the Belden Village Mall (the "Mall"). The Mall encompasses approximately 900,000 square feet and has about 100 retail stores.

The Jacobs Group employs a general manager to oversee the operations at the Mall. The position is currently held by Thomas Rinka who has held the job for the past four years. Marketing Director Jennifer Welsh reports directly to him.

The Employer employs employees in several departments at the Mall including: housekeeping, customer service, promotion, maintenance, supervisory/office and guards. It has published separate employee handbooks for its full-time and part-time employees. The manuals describe company policies and benefits. Full-time employees are entitled to paid holidays, vacations, health and life insurance programs, tuition assistance and a 401(k) plan. Part-time employees are entitled to extra holiday pay and a 401(k) plan if they have worked at least 1,000 hours during their first year of employment.

Customer service employees staff an information desk called a “customer service center” in the Mall. Their duties include selling lottery tickets and gift certificates, handling cash receipts, answering telephones and providing information to shoppers. They also rent strollers. They report to the marketing director. There are eight part-time and no full time employees in the position. The starting pay is \$6.75 an hour. They generally work three shifts a week, each of four hours duration. Customer service employees are eligible to receive certain benefits available to part-time employees noted in the handbook. In addition they are entitled to a mall discount, offered by individual retailers at the Mall. The Employer does not reimburse the retailers for this discount.

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<sup>2</sup> This is the term the parties used in Joint Exhibit 2.

Promotional employees are employed to help out with promotional events at the Mall. Such events include a monthly “Kid’s Club” and a “Shop Three” promotion and seasonal events including Christmas and Easter. The promotional employees help set up the promotions, including decorating, and stock gift wrap. They also provide gift wrapping services for shoppers. There are twelve or thirteen promotional employees who work at times throughout the year. There are no full time promotional employees. These employees work shifts ranging from an hour or two, up to six hours. Shifts vary from less than one a month to three or four shifts a week. The promotional employees report to the marketing director. Their starting wage is \$5.75 an hour and they are also eligible for the benefits available to part-time employees.

In addition to the promotional employees who perform work throughout the year, Jacobs Group also hires temporary/seasonal employees specifically to work during the Christmas and Easter seasons. These employees begin working at various times about eight to nine weeks before Christmas and three weeks before Easter. After working the holiday season they are released. About 30 to 40 promotional employees are hired for these peak periods.<sup>3</sup> These employees perform work similar to that done by other promotion department employees or the customer service employees, i.e., selling gift certificates, gift wrapping and setting up promotions.. They also help out with the Santa Land display and photo operation. Some of them may work portraying Santa or one his helpers. A

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<sup>3</sup> During the Christmas season the Employer hires many more temporary/seasonal employees than at Easter. The Employer hired 3 temporary employees for the 1998 Easter season and 8 for the 1999 season.

similar situation occurs at Easter where they assist with the Easter display and photo operation and portray the Easter Bunny. These individuals report to the marketing director and are paid in the range of \$5.25 to \$5.50 an hour with the employees portraying Santa receiving pay in the range of \$11.00 to \$12.00 an hour.<sup>4</sup>

The Mall has a food court and the Employer hires several full-time and part-time employees to work there. These individuals report directly to the general manager. Of the six food court employees working in the food court, two are full-time and four are part-time employees. The duties of these workers include cleaning and busing tables, emptying trash, maintaining restrooms, and mopping and sweeping floors in the food court area. The food court employees receive the same benefits as other full and part-time employees and their starting wage is \$6.70 an hour and tops out at \$8.09 an hour. The Employer hires approximately three additional temporary/seasonal employees to work in the food court during the Christmas season, who are released after the holiday.

There are four part-time housekeepers hired to sweep and mop floors, clean rest rooms and empty trash throughout the mall. Occasionally they may also shovel snow at the entrances to the mall and empty outside trash containers, if maintenance employees are not available. They are assigned carts containing cleaning supplies, mops, buckets, wet floor signs and toilet paper. These employees report to the maintenance director, a position currently held by Andy

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<sup>4</sup> Rinka testified that these employees are paid \$5.75 an hour, however, a list of these employees establishes that their range of pay is between \$5.25 to \$5.50 an hour. (Tr. 17, Joint Exhibit 3).

Revard. The housekeepers starting wage is \$6.75 an hour and they receive benefits provided to other part-time employees.

The maintenance department has four employees, all of them full-time. Their duties include cleaning up outside in the mall's parking lot, cleaning trash, sweeping sidewalks, and performing maintenance functions around the mall including but not limited to changing light bulbs, painting, plunging toilets, making repairs such as nailing trim and tightening screws, checking mall vehicles for proper fluid levels, and setting up promotional booths. The full extent of their duties will be further explored during the discussion regarding the issue of their inclusion into the bargaining unit. They do not hold any licenses or certifications in any of the trades but are required to have a valid driver's license. The maintenance employees report to the maintenance director, Andy Revard. Their starting wage is \$8.75 and they receive the same benefits as full time employees.

## II. ANALYSIS

It is well established that the Act requires only that a petitioner seek an appropriate unit, and not the most appropriate or comprehensive unit. See, Morand Brothers Beverage Co., 91 NLRB 409 (1950), *enfd.* 190 F. 2d 576 (7th Cir. 1950) and Capital Bakers, 168 NLRB 904 (1967). In deciding an appropriate unit, the Board first considers the union's petition and whether the unit sought is appropriate. Overnite Transportation Company, 322 NLRB 723 (1996). A petitioner's desire concerning the composition of the unit which it seeks to represent constitutes a relevant consideration. Marks Oxygen Company of Alabama, 147 NLRB 228 (1964).

In determining the appropriate bargaining unit the Board's focus is on whether the employees share a "community of interest". **Overnite Transportation Company**, supra at 724 (quoting **NLRB v. Action Automotive**, 469 U.S. 490 (1985)). The Board has held that in arriving at an appropriate unit determination it weighs "various community of interest" factors including:

"[A] difference in method of wages or compensation; different hours of work; different employment benefits; separate supervision; the degree of dissimilar qualifications, training and skills; differences in job functions and time spent away from the employment or plant situs under State or Federal regulations; the infrequency or lack of contact, with other employees; lack of integration with the work functions of other employees or interchange with them; and the history of bargaining."  
**Kalamazoo Paper Box Corp.**, 136 NLRB 134, 137 (1962).

Having considered the relevant factors and with no objection by the Employer as to their inclusion, I find that the full-time and regular part-time employees in the housekeeping, promotion, gift wrap, customer service and food court departments are included in the unit.

#### **A. SCOPE OF THE BARGAINING UNIT – THE TEMPORARY/SEASONAL EMPLOYEES**

The Employer has requested that employees who are hired to work for the Christmas and Easter shopping seasons also be included in the bargaining unit. As noted above, the Petitioner objects to the inclusion of these employees. While most of the temporary/seasonal employees are hired by the Employer to work primarily in promotions, a few work in the food court. In this connection, during the 1998 Christmas season thirty temporary/seasonal employees were hired to work in promotions and two in the food court. Three employees were hired for promotions work for the 1999 Easter season. Thirty five employees were hired to

work in promotions and one in the food court for the 1999 Christmas season. Eight employees were hired for promotions for the 2000 Easter season.

In **F.W. Woolworth Company**, 119 NLRB 480 (1957) the Board considered whether to include seasonal and on-call employees in a unit for a retail variety store and restaurant. The seasonal employees were hired during the Christmas and Easter seasons and other similar periods. Finding they did not share a community of interest with other employees, the Board did not include the employees in the appropriate unit. In **The Root Dry Goods Co., Inc.**, 126 NLRB 953 (1960), the Board again addressed the issue of inclusion of seasonal employees in a unit in a retail department store operation. The Board stated that Christmas and Easter "extras" hired for the holiday seasons were only casual employees and not to be included into the unit. In reaching this conclusion the Board considered whether the employees generally returned to work each year and had an expectation of continued employment. **Root**, *supra*, at 955, fn. 10.

**See's Candy Shops, Inc.**, 202 NLRB 538 (1973) presented the Board with an opportunity to consider whether to include in a bargaining unit employees who worked part-time during one of the employer's five peak seasons: Thanksgiving, Christmas, Valentine's Day, Easter and Mother's Day. In that case, the temporary employees at times, worked the same hours and had basically the same duties as the regular employees. They also could become regular employees if they expressed a desire to do so. In **See's** the employees worked on average a total of about 8 to 10 weeks during the five holiday periods. The Board ruled that the employees who only worked during the employer's peak periods were casual



employees and excluded them from the bargaining unit. The Board determined, however, that employees who worked more than 350 hours in the preceding year and worked during more than peak periods were regular part-time employees and thus included in the unit.

Recently, in **Macy's East**, 327 NLRB No. 22 (1998) the Board found that temporary employees working in the employer's costume shop preparing garments for the Macy's Thanksgiving Day parade should not be part of the bargaining unit. The eight employees involved worked from August/September through December/January. The Board noted:

"In deciding whether seasonal employees' are eligible voters, the Board assesses their expectation of future employment. Factors which the Board considers in finding employees to be regular seasonal employees include the size of the area labor force, the stability of the employer's labor requirements and the extent to which it is dependent upon seasonal labor, the actual reemployment season to season of the worker complement, and the employer's recall or preference policy regarding seasonal employees." **Macy's**, *supra*, at pg. 1.

Against this background it is clear that the temporary/seasonal employees hired by the Employer to work during the Christmas and Easter seasons must be classified as casual employees and are excluded from the unit.

The Employer is dependent upon temporary/seasonal employees, particularly during the Christmas shopping season and to a lesser extent the Easter season. During the 1998 Christmas season 32 employees were hired and the following year 37 employees worked. Three employees worked the short 1999 Easter season and eight the 2000 season. The work is not highly skilled and involves diverse activities ranging from gift wrapping packages, selling gift

certificates and assisting in the Santa Land activities for the promotional employees. The food court employees clean and bus tables. It is not disputed that the temporary/seasonal employees work with the regular employees, perform much of the same work, work similar hours for the limited holiday period and work under the same supervision.

There are, however, differences between the temporary/seasonal employees and the regular employees. With few exceptions, such as individuals hired to play Santa Claus, the temporary/seasonal employees earn less than their regular employee counterparts. Generally, the temporary/seasonal employees earn in the range of \$5.25 to \$5.50 an hour even after returning for several seasons.<sup>5</sup> The vast majority of regular promotional employees earn \$5.75 an hour.<sup>6</sup>

The Employer has a handbook describing its policies and benefits. Although General Manager Rinka testified that all temporary/seasonal employees receive a copy of the part-time associates handbook, Bonnie Wong, who has been employed at the Mall for six years indicated otherwise. Wong, who has conducted the employee orientations for gift wrappers, noted that at these meetings employees fill out forms, are given instructions as to where to park, how to dress and how to wrap packages. She testified that she never provided copies of the employee handbook to temporary/seasonal employees, nor has she ever seen a temporary/seasonal employee with the handbook. Although it may be the

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<sup>5</sup> Cheryl DeOreo, the only employee to have worked all four seasons only earns \$5.50 an hour. Joint Exhibit 3.

<sup>6</sup> Joint Exhibit 1.

Employer's policy to provide temporary/seasonal employees a handbook, it appears that the employees are not customarily provided the handbooks.<sup>7</sup>

The Employer claims that all employees, whether regular or temporary/seasonal, are entitled to the same benefits. The temporary/seasonal employees are all part-time and, as such, benefits are essentially limited to obtaining mall discounts and participation in the Employer's 401(k) program. Mall discounts are those offered to mall employees not by the Employer but rather by individual retailers located in the Mall. Participation in the Employer's 401(k) program requires that employees work at least 1000 hours during the first year of employment. None of the temporary/seasonal employees meet this requirement and there is no evidence that any of them participate in the program. Consequently, this factor does not support their inclusion in the unit.

In See's Candy, *supra*, at 539, the Board included in its analysis consideration of the number of hours worked by seasonal employees and the periods during which the work was performed. As noted above, it excluded from the bargaining unit seasonal employees who did not work in periods other than the peak periods.

In the instant case, it is clear that the regular employees work part-time, to varying degrees, throughout the year. For the most part, their number of hours worked per employee, on average, far exceed the hours worked by the temporary/seasonal employees, whose work activity is limited to only the

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<sup>7</sup> Marketing director, Jennifer Welsh testified that the handbook was provided to employees with a packet of information and that employees had to sign for the packet. The Employer did not produce any signed employee forms showing receipt of the packet or the handbook.

seasonal periods. Although the Employer notes that a few of the temporary/seasonal employees have worked more hours since August 1998 than two regular part-time employees, Tina Stonebrook and Lynn Gephart, it is also clear that a significant number of the temporary/seasonal employees have worked a very small number of hours during this period. At least eight of the individuals have worked fewer than 50 total hours in the two year period from August 1998 to present, and another 12 have only worked between 51 and 100 hours. Only 10 of the 55 temporary/seasonal employees have worked more than 200 hours in the two year period. The work performed by the temporary/seasonals has been done only during one or more of the four seasonal periods. In contrast, five of the regular promotions' workers have in excess of 1,000 hours worked spread throughout the two year period and all but three have worked more than 300 hours.<sup>8</sup>

In determining whether seasonal employees are eligible for inclusion in the bargaining unit the Board considers whether they have an expectation of future employment. The Board in Macy's, *supra*, at pg. 1, noted four factors to consider when determining this issue: size of the area labor force; stability of the employer's labor requirements and the extent to which it is dependent upon seasonal labor; the actual reemployment of the worker complement; and the employer's recall policy regarding seasonal employees.

It is apparent from the testimony here that the size of the potential labor force available is significant, encompassing a large geographic area in north east

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<sup>8</sup> Employer Exhibit 2.

Ohio. The Employer advertises for job applicants for the temporary/seasonal positions at least throughout the Canton-Akron area. Rinka indicated that the Employer begins to advertise for "Christmas help" in September by placing ads in the Canton Repository and the Akron Beacon Journal. He was also certain that signs were placed in the Mall advertising for "Christmas help" and that the company noted the job vacancies on its internet website. Wong reported that she had seen ads for help placed in several major publications including the Canton Repository and the Akron Beacon Journal. She also noted that signs advertising employment opportunities are placed in the Mall for "Christmas Help". The Petitioner introduced several advertisements appearing in the Canton Repository and Akron Beacon Journal, newspapers of general circulation, seeking help in the promotions department for the "holiday season".

As a result of its need to hire temporary/seasonal employees during the Christmas and Easter seasons, the Employer has hired about 50 of these employees to work in either the promotions department or the food court since the 1998 Christmas season. Only 13 employees who worked during the 1998 Christmas season returned to work in 1999, 24 new employees were added. Of the three employees hired to work the 1998 Easter season only one worked the 1999 season. Seven new employees worked the 1999 Easter Season.

Rinka testified that the temporary/seasonal employees were encouraged to reapply for employment for the next seasonal period. He admitted, however, that he never told this to employees himself and was not certain sure they were advised of future employment opportunities.

The current marketing director for the Mall, Jennifer Welsh, testified that she had been in her position since March 2000 but had previously worked at the Mall as an intern from June 1998 to May 1999 and as an assistant marketing director from May 1999 to July 1999 before receiving an interim assignment at another mall between July 1999 and March 2000. As an intern at the Mall in 1998 Welsh had responsibility for the Santa Land and photo operation. Welsh was present at interviews where job applicants were told that they were being hired for a seasonal position but that there were opportunities to come back.<sup>9</sup> She testified that she personally relayed the same message to employees at the end of the holiday season. Welsh had no responsibility for the individuals hired for gift wrapping in 1998 nor was she present at the Mall at all for the 1999 Christmas season hiring.

Debbie Barth, currently employed as a gift wrapper at the Mall, was the gift wrap supervisor from 1994 to October 15, 1999. She testified that seasonal employees were hired from an ad placed in the paper. She indicated that she interviewed prospective employees and never told them anything about continued or future employment beyond the current season for which they were hired. Barth indicated that when asked by employees about continued employment for the next season she told them only that they would be evaluated at the end of the season. Similarly, Wong testified that she never told employees about future employment but did tell them, if asked, that if something became available the Employer would get in touch with them, but that nothing was permanent.

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<sup>9</sup> Welsh testified that Susan Whitehead, the marketing director at that time, conducted the

The record is also less than clear as to the procedures the Employer used to recall employees who had worked prior holiday seasons. Welsh testified that when she worked as an intern she called employees who had worked the past Christmas season. She was unable, however, to provide many specifics, noting that she could not remember how many people she contacted but was able to identify some of the names. Barth's and Wong's testimony was consistent to the extent that employees would be evaluated on performance and might be considered for future employment. Barth reported that usually around August she would start to consider bringing in employees for the holiday season and would make her recommendations to Sue Whitehead, who was the marketing director at that time.

Temporary/seasonal employees who were called back to work another season have to come in, update employment information, get fingerprinted and have a new background check prepared by the local police department. They do not have to go through a full orientation as newly hired employees.

It does not appear that the temporary/seasonal employees in issue here have any substantial expectation of future employment. Although the Employer has a definite need for seasonal help, it has a large geographic area from which to choose and does so by advertising in several newspapers of general circulation. The advertisements do not suggest an ongoing employment relationship but merely speak of "hiring for the holiday season". It is not clear that seasonal job applicants or employees are consistently advised of potential future employment

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interviews and made the statements to applicants regarding possible employment.

opportunities. The best evidence offered by the Employer is the testimony of Welsh who reported that applicants were told at interviews that there were opportunities for them to come back and that she also so advised employees when they were released. In contrast to Welsh's testimony is the consistent testimony of Barth and Wong who note that employees were not told about future employment prospects, but merely told that they would be evaluated.

The actions of the Employer as to its hiring of temporary/seasonal employees also suggests that employees were provided little expectation of future employment. It is not clear how the Employer chose to recall any past temporary/seasonal employees. Welsh testified that during her limited time as an intern in 1998 she called employees who had worked in the past. She was not able to identify how many she called. Barth's testimony establishes the uncertainty of the process of recalling employees. Indeed, she noted that she did not consider who to recall until August and then used only "mental notes" of the employees she would like to return. She then gave her recommendations to Whitehead. There is no evidence that temporary/seasonal employees were formally rated as to their work performance or that the Employer had any formal system for notifying employees of possible future employment. To find that employees had any expectation of employment on the basis of these facts would be speculative.

The small number of employees that have returned to subsequent temporary/seasonal employment is also significant. Of the 37 employees hired for the 1999 Christmas holiday season only 13 had worked the year before. Of



the temporary/seasonal employees hired for the four holiday seasons in between August 1998 and the present, only one employee worked all four seasons and four worked three seasons. A significant number worked fewer than 50 hours total during all of the seasons combined.

In summary, I find that the temporary/seasonal employees do not have any substantial expectation of continued future employment. Their situation is significantly different from the regular full-time and part-time employees employed by the Mall. Accordingly, on the basis of all of the above, I conclude they are casual employees and are excluded from the unit.

#### **B. THE MAINTENANCE EMPLOYEES**

The Employer also seeks the inclusion of the maintenance department employees in the bargaining unit, claiming they share a community of interest with the other bargaining unit employees. As noted earlier, the Board in **Kalamazoo Paper Box Co.**, 136 NLRB 134, 137 (1962) has set forth several factors to consider when evaluating community of interest including: a difference in method of wages; different hours of work; different employment benefits; separate supervision; degree of dissimilar qualifications; training and skills; differences in job functions; contact with other employees; lack of integration with the work function of other employees; and history of bargaining.

Having evaluated the evidence under the criteria enumerated above, it is clear to me that the Employer's maintenance employees do not share a community of interest with other employees in the bargaining unit. At the present time there are four employees in the maintenance department earning an hourly

wage between \$8.75 to \$11.50. Their wages exceed, by almost \$2.00 an hour, the wages paid to most of the other employees in the bargaining unit. Furthermore, as full-time employees they are entitled to a full panoply of benefits including paid holidays, vacation time, tuition assistance, a 401(k) plan, and a mall discount. With the exception of two full-time employees in the food court all of the remaining individuals in the bargaining unit are part-time employees and their benefits limited to participation in the 401(k) plan and the mall discount.

The maintenance department employees share a common supervisor, the maintenance director, Andy Revard, with the four part-time employees in the housekeeping department but not with the employees in the other departments included in the unit. Although the Employer suggests that the duties, skills and responsibilities of the maintenance employees and the housekeeping department are similar, the facts establish otherwise. The pay provided to the housekeeping employees ranges from \$6.70 to \$6.80 an hour. The pay range for the four maintenance employees is between \$8.75 to \$11.50 an hour. This \$2.00 an hour difference is substantial and underscores a significant difference between the two groups of employees.

The job descriptions for the two groups illustrates the difference in duties and responsibilities expected of each group. The maintenance employees' duties include, but are not limited to, performing minor plumbing, electrical and carpentry repairs, doing preventative maintenance to mall equipment and the building, setting up and taking down mall promotions, monitoring meters and gauges and setting up staging, curtains, chairs and sound equipment. They must

be able to lift up to 80 pounds and hold a valid driver's license. Housekeepers, on the other hand, are charged with the responsibility of maintaining and cleaning the common areas of the mall, providing information to customers, operating and maintaining cleaning equipment, emptying trash containers, mopping spills, and cleaning restrooms. They are required to lift up to 30 pounds.

When questioned about the accuracy of the job descriptions Rinka testified that the maintenance position as written was more "glamorous" than the job itself. He stated the job involved more sweeping up trash, emptying trash and cleaning up than had been reported. He also noted the job did not involve any extensive plumbing, carpentry or electrical work and was limited to plunging toilets, repairing trim boards, and changing light bulbs. Rinka indicated that the job description as written was one that was used by several malls and did not accurately reflect the work done by the maintenance men at the Belden Village Mall. He did note the job description for the housekeeping employees was generally accurate except these employees also do some snow removal at the entrances to the Mall, if the maintenance employees are not available.

Although Rinka testified that the maintenance employee job description over-stated the actual duties of the position, the job description is very similar to an advertisement the Mall placed in the Canton Repository on September 19, 1999. The advertisement notes that the job includes performing minor plumbing, carpentry and electrical repairs, and doing snow and ice removal.

Testimony received at the hearing clearly establishes that maintenance men perform duties requiring different and, to some degree, a higher level of

skills than those of the housekeeping department employees or the employees of the other departments in the bargaining unit. Wong testified that she observed maintenance employees painting, grouting, fixing light sensors and mall strollers. She also saw them putting up barricades at the Mall when a tenant vacated. She further reported that she has not observed any housekeeping, or other classification of employee do this work. Barth observed maintenance employees building cupboards, adjusting mismatched doors, putting down carpet, setting up tables, and painting doors.

In contrast to the duties performed by the maintenance department, the housekeeping department performs rather basic duties such as sweeping and mopping floors and cleaning restrooms. It is also apparent that the duties performed by the maintenance employees differs significantly in skill and type from the work performed by the customer service representatives, the promotional employees and the food court employees. Although some interaction of the different groups invariably occurs, it is not significant. The maintenance department is involved with assisting with the setting up of promotions but their involvement is fairly limited. Wong testified they set up the gift wrap booth and bring up supplies. These observations were confirmed by Barth.

The facts here establish that maintenance employees do not share such a community of interest with the other employees in the bargaining unit so as to mandate their inclusion when the Petitioner does not seek to represent them. **Overnite Transportation**, 322 NLRB 723, 725-726 (1996); **The Lundy Packing Company**, 314 NLRB 1042, 1043 (1994). enf. denied 68 F.3d 1577 (4<sup>th</sup> Cir.

1995). In concluding that the maintenance employees are not required to be included in this unit over the Petitioner's objection, I note the Board has long held that maintenance employees can constitute a separate appropriate unit. **American Cyanamid Co.**, 131 NLRB 909 (1961).

In the instant case the maintenance employees possess greater skills and have more complex duties than the other employees. This conclusion is supported not only by observations of employees but by the fact they receive a significantly greater wage than other employees in the bargaining unit. They work more hours than most of the other employees in the bargaining unit, are considered full-time and are entitled to a significantly greater benefit package. Their interaction with other employees is relatively limited. I therefore conclude the maintenance employees do not share such a community of interest with the bargaining unit and so as to mandate their inclusion and I shall accordingly exclude them from the unit.

### **C. THE STATUS OF BONNIE WONG**

At the hearing, the Employer asserted Wong is a supervisor within the meaning of Section 2(11) of the Act. The Petitioner disputes her supervisory status. Wong testified that she is employed as a gift wrap supervisor and a customer service representative. However, the record does not contain sufficient information to permit me to make a determination regarding Wong's status as a supervisor within the meaning of Section 2(11) of the Act. I therefore rule that

she will be permitted to vote, under challenge, at the representation election to be held in this matter.<sup>10</sup>

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 880, AFL-CIO, CLC.**

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<sup>10</sup> On July 17, 2000, subsequent to the close of the hearing, the Employer by letter requested the Regional Director conduct an investigation as to an issue of possible supervisory taint of the showing of interest because of the actions of alleged supervisor Bonnie Wong. By letter dated August 3, 2000, I informed the parties that the investigation established that, regardless of Wong's supervisory status the Petitioner still has more than the requisite 30 percent showing of interest and that the petition would continue to be processed.

### **LIST OF VOTERS**

In order to ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. **Excelsior Underwear Inc.**, 156 NLRB 1236 (1966); **N.L.R.B. v. Wyman-Gordon Co.**, 394 U.S. 759 (1969). Accordingly, it is directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this decision. **North Macon Health Care Facility**, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington, by August 21, 2000.

Dated at Cleveland, Ohio this 7th day of August 2000.

/s/ Frederick J. Calatrello

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Frederick J. Calatrello  
Regional Director  
National Labor Relations Board  
Region 8

460-5067-5600